

ENVIRONMENTAL PROTECTION COMMISSION
SPECIAL MEETING/PUBLIC HEARING
MINUTES
June 25, 2008

7:30 P.M.
Room 119, Town Hall

Chairman Hillman called the meeting to order at 7:30 P.M. Commission Members Present: Peter Hillman, Craig Flaherty, Rick Rohr, Michael Tone, Pete Kenyon, Ellen Kirby and Susan Cameron.

Staff Present: Jeremy Ginsberg

Court Reporter: Bonnie Syat

Mr. Hillman read the first agenda item:

EPC-34-2008, Foster Kaali-Nagy, 70 Five Mile River Road, proposing dock ramp construction in an upland review area. The site is shown on Assessor's Map #66 as Lot #9.

Mr. Kaali- Nagy represented himself. He said they are applying for a dock on a 10 foot sliver of land. The dock will have a 4'x10' access down to a 32' ramp. He said they have both DEP and ACOE approval.

Ms. Cameron asked about the surface of the accessway. Mr. Kaali-Nagy said it would not be paved. He said the dock would require wooden footings with two foot pilings. Mr. Tone said they would not want to see old telephone poles used.

Mr. Kaali-Nagy said the dock would be used for boats or kayaks and everything would be removed in the winter and stored off-site. Mr. Flaherty asked if the deed rights go with #70 Five Mile River Road. Mr. Kaali-Nagy said yes.

Mr. Kenyon made a motion to approve the application with a stipulation that the pilings be of an environmentally friendly material to be approved by staff. Mr. Rohr seconded the motion and it passed unanimously.

Mr. Hillman read the first public hearing item:

EPC-26, 2008, Darien YMCA, 2420 Boston Post Road, proposing a building addition within an upland review area. The site is shown on Assessor's Map #53 as Lot #60.

Attorney Robert F. Maslan, Jr. represented the applicant.

Mr. Ginsberg submitted a June 23-2008 letter from Joe Canas of Tighe & Bond.

Mr. Maslan submitted an e-mail from the Wrights to Mr. Morrissey dated June 19, 2008. Mr. Hillman said that some of their issues seem to be P&Z issues.

Mr. Maslan said one of their issues is planting on the point. Mr. Hillman asked if these were mitigation plantings. Matt Popp said the trees could be placed elsewhere. They would keep the

ENVIRONMENTAL PROTECTION COMMISSION
SPECIAL MEETING/PUBLIC HEARING
MINUTES
June 25, 2008
PAGE 2

bayberry and shift the tree locations to avoid impacts to the Wrights. Mr. Flaherty said there should be some flexibility to balance interests. Mr. Hillman said that, if P&Z should require a modification, the quantity could be the same but the locations could vary.

Mr. Maslan said the issues from the Tighe & Bond report they still have to verify are #5 regarding the perc rate, and McChord Engineering is still investigating #13.

Mr. Kenyon said he is concerned about putting a "bathtub" within the 100 foot upland review area.

Ms. Cameron said her concern is not the pool but the parking lot runoff.

Mr. Maslan said the pool is to accommodate the high school swimming programs. He said the pool must be adjacent to the existing pool and cannot be next to the nursery school.

Mr. Morrissey described the phasing of the construction.

Mr. Rohr asked if they could turn the pool 90 degrees. Mr. Maslan said they could not because of the requirement for the playground.

The Commission closed the public hearing and proceeded to deliberate.

Mr. Hillman said that Town Counsel is steadfast in their opinion that the EPC has jurisdiction over Holly Pond. He said the applicant has offered plantings and stormwater treatment to offset any impacts. There is no need to demonstrate the need for a feasible and prudent alternative without a significant impact.

Mr. Tone said the mitigation proposed is useful, especially the removal of the asphalt debris, and the relocation of the roof drain is also a benefit.

Ms. Kirby said she has mixed feelings.

Mr. Rohr said there are alternatives.

Mr. Flaherty said he is impressed with the breadth of the stormwater system. He said all of the water is being captured. He said the alternatives need to meet the basic objectives of the applicant. He questioned what the impacts of the encroachment would be. He said the slope is now well vegetated and adding trees is a benefit.

Mr. Kenyon said he could not support the application without a review of all alternatives.

Ms. Cameron said she agreed with Mr. Hillman and Mr. Flaherty that the concern is the parking lot. She said the trees will remain in the pool area and the pool will not impact Holly Pond. She said that P&Z can pursue other issues such as the glare from the building. Mr. Hillman said the EPC as the Conservation Commission could express concerns about the glare.

Mr. Hillman asked staff to draft a resolution for a vote on a night when all of the members are present.

ENVIRONMENTAL PROTECTION COMMISSION
SPECIAL MEETING/PUBLIC HEARING
MINUTES
June 25, 2008
PAGE 3

Mr. Hillman read the next public hearing item:

EPC-16-2007, 5 Holly Lane Associates (formerly Patrick Goulding and Anna Zaranski), proposing an amendment to the drainage plan and a sump pump discharge to a regulated area. The site is shown on Assessor's Map #9 as Lot #147.

Attorney Maslan represented the applicant. He introduced Steven Finn.

Mr. Hillman said that Mr. Finn is a friend of his but he can still objectively review the application.

Mr. Maslan said he had received a comparison chart prepared by Rich Jacobson dated 6-23-08. Mr. Hillman said he asked Rich to prepare the chart. He said the basement is not on the chart.

Mr. Maslan also submitted Mr. Ferlow's 6-24-08 memo including a three page report with photos and Mr. Ferlow's CV.

Mr. Hillman said Mr. Flaherty's CV would be included in the record. Mr. Rohr did not put his into the record. Mr. Hillman said the Commission should include the CVs more often. Mr. Rohr said he has been an engineer for 34 years, most recently in geotechnical engineering. He said he served on the Stamford EPB for 7 years and on the Westport F&ECB.

Mr. Maslan referred to the last plan revision of 6-10-08. He said the plan shows previous grades and existing grades. He said there is a maximum of one foot of fill and less in most places. Mr. Hillman said the he believed this fill number was not significant.

Mr. Maslan showed the plan submitted to DPW showing the proposed catch basin connection revised to 5/08. He said they applied to DPW who said they would allow the tie-in if EPC requires it. He said they found no errors in the engineering calculations.

Barry Hammons, P.E. said he has prepared a total of 3 reports. Mr. Hillman asked him if he has reviewed the DiVesta report. Mr. Hammons read the report to himself. He said the rain garden was designed for runoff quality and volume. He said if it were expanded it may be better than the original plan. He said he saw no material differences on the bio-swale. He said the report did not alter his opinion.

Mr. Hammons said he had reviewed the Ferlow report. Mr. Hillman said Mr. Ferlow's preference was the catch basin connection and asked if that was his preference. Mr. Hammons said yes but for different reasons. He said there would be no need to armor the channel if they were tying in. He said Don Ferlow looked at it from a different perspective. He said the Cultechs do no harm in the ground. He said they provided some volume attenuation. He said he agreed that adding 0.12 cfs per day to the catch basin is a meaningless number it is so low.

Mr. Hillman said they don't want to exacerbate the situation. He asked Mr. Hammons if the bottom line is that if it is tied into the catch basin it will not cause flooding. Mr. Hammons said yes. He said the neighbors are not worried about the rate of flow but the volume. He said by pumping to the catch basin it would be getting rid of water and will not add to the peak flows during a storm.

ENVIRONMENTAL PROTECTION COMMISSION
SPECIAL MEETING/PUBLIC HEARING
MINUTES
June 25, 2008
PAGE 4

Mr. Hillman asked him if the better course is the catch basin. Mr. Hammons replied yes, he concluded that in his first report.

Todd Ritchie, PE., Stearns & Wheeler, said Don Ferlow evaluated the situation as it is now. His recommendation is that if the flow is tied into the catch basin the concerns would be addressed.

Mr. Flaherty asked a question about the calculations. Mr. Hammons said the methodology used by Mr. Ritchie is fine.

Mr. Rohr asked if they were trying to have the water beat the peak would the removal of the Cultech units help. Mr. Ritchie said more on-site water has a greater chance for the peaks to converge.

Mr. Flaherty said he is less concerned about trying to beat the peak in a small watershed. He said there is an overall reduction in impervious surface on the property.

Mr. Rohr asked about the suggestion for a rain garden in the front. Mr. Ritchie said it would not do much and would not be appropriate and not near the wetlands. Mr. Rohr said he would want a certification from the engineer that the rain garden was done correctly and confirmation that it was enlarged horizontally.

Mr. Tone asked if the tie in would have any adverse effect. Mr. Hammons said no, it would be beneficial.

Mr. Kenyon asked about filling in the ditch. Mr. Ritchie said it was filling in naturally. He said the ditch would still get runoff but less.

Attorney Wilder Gleason represented Mr. and Mrs. Depp. He said they insist that the elevation of the rain garden be changed to match the prior approval. He said the Depps want the Cultechs removed because it brings ground water to the surface. He said they want to eliminate the possibility of that. He said they still have concerns despite the expert's testimony. He said the Commission did not approve the stone wall, the pipes, the dry wells or the re-grading. He submitted the prior approval and photo showing pipes going to the rain garden. He said the wall was constructed during the hearing process. He said the plans don't show the features constructed. He submitted a list he said were violations of the stipulations. He said approving this would be a bad precedent. He said DiVesta said there was fill in the wetlands. He said there is an impact on the wetlands and the Commission must consider alternatives. He submitted a list of alternatives numbered 1-10 with 11 as a handwritten addition. He reviewed the list.

Chris Rowland, VP of Save Darien's Wetlands said he lives downstream. He said it is irresponsible to build like this. He said this is the moment of truth.

Cheryl Russell, 18 Holly Lane said she agrees with Mr. Gleason. She said subsidence and sink holes can be created. She said she has been an RTM member for 20 years and her constituents will be compromised. She said she called the Darien Health Department and Rick Petersen came out and

ENVIRONMENTAL PROTECTION COMMISSION
SPECIAL MEETING/PUBLIC HEARING
MINUTES
June 25, 2008
PAGE 5

said that if the water is polluted it could be a misdemeanor. Mr. Hillman said they could not accept that testimony because it was hearsay and speculative.

Ms. Dale, Holly Lane, said the building infringes on her rights.

Barry Grandon, Old Parish Road asked if the drawdown will have an effect.

Mr. Maslan said the staff signed off on a basement. He said the original plan did not have specifics on the rain garden design. He said the staff required the Cultechs in front. He said the EPC resolution referred to Cultechs not on the plan.

Mr. Hillman asked if they acquired the property after the EPC approval. He asked if VAS had input into the process and asked several questions. Arnold Karp said they acquired the property after the approvals. He said they were aware the property went to EPC for approval. Mr. Schiaretta said they bid the project with a basement. He said they bought it with an approved plan and knew there used to be a slab. Mr. Karp said they would not do test borings for a residential project. He said only in the last part of the digging did they hit groundwater. He said filling part of the basement would not fix the problem.

Mr. Hillman asked if there was any direct evidence of the Goulding plans showing a basement.

Christine Depp said they never saw a blueprint with a basement.

Mr. Hillman asked how you would get water to a rain garden without pipes. Mr. Maslan said the rain garden was not designed as a stormwater feature because the impervious surface area was reduced.

Ms. Cameron asked if Dave Keating approved the wall around the garden. Mr. Karp said the stone wall is where the lawn used to be and they have removed some lawn. Ms. Cameron asked if water runs through it. Mr. Karp said no. Mr. Ritchie pointed out the stone wall previously on the property. He said the amount of water is dictated by the roof area not the pipe size.

Mr. Maslan said they are requesting a post approval modification. He said the potential connection is outside the wetland review area except for one foot or so. He said this is not a flood hazard zone. He said the water in the trench was tested. He said the wetland regulations do not require full architectural drawings. He said there will not be an impact to the wetlands. He said they have addressed the groundwater issue and requested the Commission require connection to the catch basin.

Mr. Gleason said it was his impression the EPC was holding off on the rain garden.

Mr. Tone made a motion to close the public hearing. Ms. Cameron seconded the motion and it passed unanimously.

Mr. Hillman said there were good presentations. He said he did not think this will cause greater flooding on Holly Lane provided the water was tied into the Town drainage system and the catch basin. He said that would not create the tipping point. He said this meets criteria for a storm drainage connection. He said the failure to connect will cause a problem to the street and /or

ENVIRONMENTAL PROTECTION COMMISSION
SPECIAL MEETING/PUBLIC HEARING
MINUTES
June 25, 2008
PAGE 6

downstream. He said they have expert testimony that this is the preferred way. He said other features need to be considered as well. He said nobody favored filling in the basement or putting a moat around the house. He said the experts favor a storm drain connection.

Mr. Tone agreed and said the ditch has an adverse impact and the direct discharge to the wetland is problematic.

Mr. Hillman said there is an impact now. He said the trench should be filled in and the driveway should remain gravel. He said they could remove the Cultechs. He said they could also expand the rain garden and change the patio to a pervious surface.

Ms. Cameron said she did not think removing the Cultechs is needed and they may help with thermal pollution. She said they could maybe be disconnected. She said a rain garden in the front makes no sense. She said she would like two trees to compensate for the removal of the Cedar tree. She said she likes the 6-28-08 enhancement plan. She said she did not have a problem with the stone wall or fill. She said they could change the terrace to a pervious surface. She would like the driveway to remain gravel. She would like the berm removed. She said the trench would fill itself in over time.

Mr. Hillman said he would like a planting bond for two growing seasons.

Mr. Flaherty said they should have a bond for the plants in the regulated area and a maintenance plan. He said the Cultechs are in an area where the groundwater is two feet down and they are not draining groundwater. He said they may provide some benefit during certain times and they should remain. He is in favor of maintaining a gravel driveway and requiring a notice to that effect on the Darien land records. He said the original approval had a larger terrace. He said the Commission approved a larger terrace. He said he would like more plants in the rain garden but would defer to others. He said he would like to replace the tree that was removed. He said he would allow the catch basin connection in front of the property. He said they should clean out the catch basin and pipe in Holly Lane with the permission of DPW. He would like a certification from Stearns and Wheler.

Mr. Rohr said his first impression was to tie into the catch basin. He said the engineer must certify the rain gardens comply with intent of the 3-15-08 plan. He said the elevation is now wrong but the larger size may work. He said he is unsure about filling in the ditch and unsure about the terrace. He said he is in favor of the gravel driveway. He said the Cultechs should stay and remain connected.

Mr. Hillman said he would defer to the Commission's two engineers on the Cultechs.

Ms. Kirby said she is in favor of the gravel drive. She said she is not concerned about the terrace. She said the stone wall is a better barrier. She would like the ditch filled in and she is in favor of leaving the Cultechs. She is in favor of additional trees to make up for the cedar tree and filling the ditch. She is in favor of filing the requirement for a driveway and maintenance on the land records.

Mr. Tone said the experts are in agreement about the catch basin. He said the EPC cannot solve the Holly Lane problems in this setting. He said he is in favor of the gravel drive. He said if the terrace is reduced it can be left as is. He said the Cultechs may have some benefit and should be left in place. He said the new plantings will have a beneficial impact. He would require certification by

ENVIRONMENTAL PROTECTION COMMISSION
SPECIAL MEETING/PUBLIC HEARING
MINUTES
June 25, 2008
PAGE 7

Stearns & Wheler, a maintenance plan on the land records and cleaning the catch basin to insure proper operation. He said he is unsure about the ditch.

Mr. Kenyon said he had no comment as of yet.

Mr. Hillman asked staff to draft a resolution. He said there should be no ambiguity about the catch basin and that this is site specific. He the said rain garden still needs more plantings.

Mr. Ginsberg said they will try to get a draft resolution by July 9.

Mr. Hillman asked that Rich look at the terrace size, the elevation of the rain garden and the bond to be required.

The meeting adjourned at 11:15 P.M.

Respectfully submitted,

Richard B. Jacobson
Environmental Protection Officer